

AMENDED IN ASSEMBLY JUNE 29, 2001

AMENDED IN ASSEMBLY JUNE 13, 2001

AMENDED IN SENATE MAY 30, 2001

AMENDED IN SENATE APRIL 25, 2001

SENATE BILL

No. 773

Introduced by Senator Speier and Assembly Member Jackson

(Principal coauthor: Assembly Member Jackson *Alquist*)

(Coauthor: Assembly Member *Goldberg*)

February 23, 2001

An act to add Division 1.2 (commencing with Section 4050) to the Financial Code, relating to financial privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 773, as amended, Speier. Financial institutions: confidential consumer information.

Existing law provides for the regulation of banks, savings associations, credit unions, and industrial loan companies by the Department of Financial Institutions and by certain federal agencies, as specified.

This bill would enact the Financial Information Privacy Act of 2002, which would require a financial institution to provide specified notice to, and to obtain the consent of, a customer before disclosing to or sharing confidential consumer information, as defined, with any *nonaffiliated* 3rd party, subject to certain exceptions. ~~This bill would also require a financial institution, prior to using confidential consumer information provided by certain 3rd parties, to take reasonable steps to ensure that the party providing the information had previously followed~~

~~similar notice and consent procedures. The bill would also require a financial institution to provide its customers with the opportunity to request that the financial institution refrain from sharing the confidential consumer information of the customer with an affiliate of the financial institution.~~

This bill would ~~also~~ provide various civil ~~and criminal~~ remedies and ~~administrative fines and civil~~ penalties for negligent, or knowing and willful violations of these provisions. ~~Because of the inclusion of criminal penalties, this bill would impose a state-mandated local program by creating a new crime.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

1 SECTION 1. Division 1.2 (commencing with Section 4050)
2 is added to the Financial Code, to read:

3
4 DIVISION 1.2. FINANCIAL INFORMATION PRIVACY
5 ACT
6

7 4050. This division shall be known and may be cited as the
8 Financial Information Privacy Act of 2002. *This division shall*
9 *become operative on July 1, 2002.*

10 4051. (a) The Legislature intends for financial institutions to
11 provide their customers notice and *meaningful* choice about how
12 consumers' ~~personally identifiable sensitive financial~~ *personal*
13 information is shared or sold by their financial institutions.

14 (b) *It is the intent of the Legislature in enacting the Financial*
15 *Information Privacy Act of 2002 to afford persons greater privacy*
16 *protection than those provided in Public Law 106-102, the federal*
17 *Gramm, Leach, and Bliley Act, and that this division be interpreted*
18 *to be consistent with that purpose.*

19 4052. For the purposes of this division:

(a) “Confidential consumer information” means personally identifiable data, including, but not limited to, names, addresses, telephone numbers, social security account numbers, driver’s license numbers, account numbers, deposits, withdrawals, interest rates, fees and other charges, transactions, account balances, maturity dates, and payouts, with respect to the following:

~~(1) Deposit and trust accounts.~~

~~(2) Certificates of deposit.~~

~~(3) Securities holdings.~~

~~(4) Insurance policies.~~

~~(5) Any other account maintained by a consumer at a financial institution.~~

~~(b) “Financial institution” includes a commercial bank, trust company, savings association, industrial loan company, credit union, insurance company, securities brokerage, mortgage lender, or person engaged in the business of lending money and doing business in this state. identifiable financial information (1) that a consumer provides to a financial institution to obtain a product or service from the financial institution, (2) about a consumer resulting from any transaction involving a product or service between the financial institution and a consumer, or (3) that the financial institution otherwise obtains about a consumer in connection with providing a product or service to that consumer. Any personally identifiable information is financial if it was obtained by a financial institution in connection with providing a financial product or service to a consumer, including the fact that a consumer is a customer of a financial institution. Confidential consumer information does not include publicly available information that is lawfully made available to the general public from (1) federal, state, or local government records, (2) widely distributed media, or (3) disclosures to the general public that are required to be made of federal, state, or local law, except that confidential consumer information shall include any list, description, or other grouping of consumers, and publicly available information pertaining to them that is derived using any nonpublic personal information other than publicly available information, but shall not include any list, description, or other grouping of consumers, and publicly available information pertaining to them that is derived without using any confidential consumer information.~~

1 (b) “Personally identifiable financial information” includes
2 all of the following:

3 (1) Information a consumer provides to a financial institution
4 on an application to obtain a loan, credit card, or other financial
5 product or service.

6 (2) Account balance information, payment history, overdraft
7 history and credit or debit card purchase information.

8 (3) The fact that an individual is or has been a customer of a
9 financial institution or has obtained a financial product or service
10 from a financial institution.

11 (4) Any information about a financial institution’s consumer if
12 it is disclosed in a manner that indicates that the individual is or
13 has been the financial institution’s consumer.

14 (5) Any information that a consumer provides to a financial
15 institution or that a financial institution or its agent otherwise
16 obtain in connection with collecting on a loan or servicing a loan.

17 (6) Any information collected through an Internet cookie or an
18 information collecting device from a web server.

19 (7) Information from a consumer report.

20 (c) “Financial institution” generally means any institution
21 engaging in financial activities as described in Section 1843(k) of
22 Title 12 of the United States Code and doing business in this state.
23 The term “financial institution” does not include the Federal
24 Agricultural Mortgage Corporation or any entity chartered and
25 operating under the Farm Credit Act of 1971 (12 U.S.C. Sec. 2001
26 et seq.), provided that the entity does not sell or transfer
27 confidential consumer information to a nonaffiliated third party.
28 The term “financial institution” does not include institutions
29 chartered by Congress specifically to engage in a proposed or
30 actual securitization, secondary market sale, including sales or
31 servicing rights, related to a transaction of the consumer, as long
32 as those institutions do not sell or transfer confidential consumer
33 information to a nonaffiliated third party.

34 (d) “Affiliate” means any person or entity that, directly or
35 indirectly, controls, is controlled by, or is under common control
36 with another person or entity.

37 (e) “Nonaffiliated third party” means any entity that is not an
38 affiliate of, or related by common ownership or affiliated by
39 corporate control with, the financial institution.



1 (f) “Consumer” means an individual who obtains or has
2 obtained a financial product or service from a financial institution
3 that is to be used primarily for personal, family, or household
4 purposes, or that individual’s legal representative.

5 (g) “Control” means the direct or indirect possession of the
6 power to direct or cause the direction of the management and
7 policies of another entity. Control includes any of the following:

8 (1) ownership or power to vote 25 percent or more of the
9 outstanding shares of any class of voting security of a company,
10 acting through one or more persons, (2) power in any manner over
11 the election of a majority of the directors, or of individuals
12 exercising similar functions, or (3) the power to exercise a
13 directing influence over the management of policies of a company.

14 (h) “Necessary to effect, administer, or enforce” means the
15 following:

16 (1) The disclosure is required, or is a usual, appropriate, and
17 customary method to carry out the transaction or the product or
18 service business of which the transaction is a part, and record or
19 service or maintain the consumer’s account in the ordinary course
20 of providing the financial service or financial product, or to
21 administer or service benefits or claims relating to the transaction
22 or the product or service business of which it is a part, and includes
23 the following:

24 (A) Providing the consumer or the consumer’s agent or broker
25 with a confirmation, statement, or other record of the transaction,
26 or information on the status or value of the financial service or
27 financial product.

28 (B) The accrual or recognition of incentives or bonuses
29 associated with the transaction that are provided by the financial
30 institution or another party involved in providing the financial
31 service or product.

32 (2) The disclosure is required or is a lawful method to enforce
33 the rights of the financial institution or of other persons engaged
34 in carrying out the financial transaction or providing the product
35 or service.

36 (3) The disclosure is required, or is a usual, appropriate, and
37 customary method for insurance underwriting at the consumer’s
38 request, for reinsurance purposes, or for any of the following
39 purposes as they relate to a consumer’s insurance:

40 (A) Account administration.

- 1 (B) Reporting, investigating, or preventing fraud or material
2 misrepresentation.
- 3 (C) Processing premium payments.
- 4 (D) Processing insurance claims.
- 5 (E) Administering insurance benefits, including utilization
6 review activities.
- 7 (F) For internal research purposes.
- 8 (G) As otherwise required by federal or state law.
- 9 (4) The disclosure is required, or is a usual, appropriate, and
10 customary method, in connection with the following:
- 11 (A) The authorization, settlement, billing, processing,
12 clearing, transferring, reconciling, or collection of amounts
13 charged, debited, or otherwise paid using a debit, credit or other
14 payment card, check, or account number, or by other payment
15 means.
- 16 (B) The transfer of receivables, accounts, or interests therein.
- 17 (C) The audit of debit, credit, or other payment information.
- 18 (i) “Financial product or service” means any product or
19 service that a financial holding company could offer by engaging
20 in an activity that is financial in nature or incidental to financial
21 activity under subsection (k) of Section 1843 of Title 12 of the
22 United States Code (the United States Bank Holding Company Act
23 of 1956). Financial service includes a financial institution’s
24 evaluation or brokerage of information that the financial
25 institution collects in connection with a request or an application
26 from a consumer for a financial product or service.
- 27 (j) “Clearly and conspicuously” means displayed in a manner
28 that is readily noticeable, readable, and understandable to
29 consumers. Factors to be considered in determining whether a
30 notice or disclosure is clear and conspicuous include prominence,
31 proximity, absence or distracting elements, and clarify and
32 understanding of the text disclosure.
- 33 (k) “Widely distributed media” means publicly available
34 information from a telephone book, a television or radio program,
35 a newspaper or a Web site that is available to the general public
36 on an unrestricted basis.
- 37 4053. (a) A financial institution shall not disclose to, or share
38 a consumer’s confidential consumer information with, any
39 nonaffiliated third party, ~~including an affiliate or agent of that~~
40 ~~financial institution, or a subsidiary, party~~ unless the financial

1 institution has provided written notice to the consumer to whom
2 the confidential consumer information relates and unless the
3 financial institution has obtained a written or electronic consent
4 acknowledgment from the consumer that authorizes the financial
5 institution to disclose or share the confidential consumer
6 information.

7 *(b) A financial institution may not disclose confidential*
8 *consumer information to an affiliate unless the financial*
9 *institution clearly and conspicuously discloses annually,*
10 *commencing on July 1, 2002, to the consumer in writing pursuant*
11 *to Section 4054 that the information may be disclosed to an*
12 *affiliate of the financial institution. Pursuant to this disclosure the*
13 *consumer shall be provided an opportunity, before disclosure of*
14 *information, 30 days from the date of postmark of the notice to*
15 *direct that the confidential consumer information not be disclosed*
16 *to an affiliate. When a consumer directs that confidential*
17 *consumer information not be disclosed, that direction is in effect*
18 *until otherwise stated by the consumer.*

19 *(c) When a financial institution without affiliates enters into an*
20 *agreement with a third party to offer, on an exclusive basis, a*
21 *financial service or financial product to its customers, it may share*
22 *a consumer's confidential consumer information on an exclusive*
23 *basis with the third party that offers the financial service or*
24 *financial product in the name of the financial institution, provided*
25 *that the offer clearly states the name of the financial institution*
26 *without affiliates that is a party to the making of the offer, and*
27 *provided that the third party is prohibited from disclosing or*
28 *otherwise using the customer information except as necessary to*
29 *provide information about the financial service or financial*
30 *product. For purposes of this subdivision, "third party" means*
31 *financial institutions as defined in subdivision (b) of Section 4052.*
32 *For purposes of this section, "exclusive basis" means a single*
33 *outside service or product offered for each separate category of*
34 *financial service or financial product provided in the name of the*
35 *financial institution without affiliates. Agreements entered into*
36 *pursuant to this subdivision shall be subject to the requirements of*
37 *subdivision (b) of this section.*

38 4054. (a) A financial institution that proposes to disclose or
39 share a consumer's confidential consumer information shall
40 provide a written notice to the consumer that describes (1) the

1 specific types of information that would be disclosed or shared, (2)
2 the general circumstances under which the information would be
3 disclosed or shared, (3) the specific types of persons or businesses
4 that would receive the information, and (4) the specific proposed
5 types of uses for the information.

6 (b) A financial institution shall provide notices and consent
7 acknowledgments to consumers as separate documents that are
8 easily identifiable and distinguishable from other documents that
9 otherwise may be provided to a consumer.

10 ~~(c) A consumer shall have access to his or her confidential~~
11 ~~consumer information that is proposed to be disclosed or shared in~~
12 ~~order to have an opportunity to review that information for~~
13 ~~accuracy, and to correct and supplement that information, if~~
14 ~~inaccurate.~~

15 ~~4055. A financial institution that obtains confidential~~
16 ~~consumer information about one of its customers from a third~~
17 ~~party that is engaged, directly or indirectly, in activities that are~~
18 ~~financial in nature, shall, prior to using that confidential consumer~~
19 ~~information, take reasonable steps to ensure that the third party~~
20 ~~providing the information, or an affiliate or agent of that third~~
21 ~~party, has previously followed information privacy procedures~~
22 ~~that are substantially similar to the procedures contained in this~~
23 ~~division.~~

24 4056. (a) This division shall not apply to information that is
25 not personally identifiable to a particular person.

26 (b) ~~This division Sections 4053 and 4054~~ shall not prohibit the
27 release of confidential consumer information under ~~any of the~~
28 following circumstances:

29 ~~(1) If the release of information is necessary to effect,~~
30 ~~administer, or enforce a transaction requested or authorized by the~~
31 ~~consumer in connection with servicing or processing a financial~~
32 ~~product or service requested or authorized by the consumer, for~~
33 ~~debt collection or billing services, for maintaining or servicing the~~
34 ~~consumer's account with the financial institution, or for enforcing~~
35 ~~a financial obligation of the consumer arising from any transaction~~
36 ~~with the financial institution.~~

37 ~~(2) To a governmental or regulatory agency or to a~~
38 ~~self-regulatory entity, with jurisdiction over the financial~~
39 ~~institution for examination, compliance, or other authorized~~
40 ~~purposes.~~

~~(3) To a court of competent jurisdiction.~~

~~(4) To a consumer reporting agency, as defined in Section 603 of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a), for inclusion in a consumer report that may be released to a third party only for a purpose permissible under Section 604 of that act (15 U.S.C. Sec. 1681b).~~

~~(5) To a state or local agency for purposes of child support enforcement.~~

~~(6) If the information is necessary to comply with federal, state, or local laws and regulations.~~

~~(7) If the information is necessary to comply with a civil, criminal, or regulatory investigation.~~

~~(8) If the information is necessary to respond to a summons or subpoena, including an administrative subpoena.~~

(1) The confidential consumer information is necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with servicing or processing a financial product or service requested or authorized by the consumer, or in connection with maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity, or in connection with a proposed or actual securitization or secondary market sale, including sales of servicing rights, related to a transaction of the consumer.

(2) The confidential consumer information is released with the consent of or at the direction of the consumer.

(3) The confidential consumer information is:

(A) Released to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein.

(B) Released to protect against or prevent actual or potential fraud, identity theft, unauthorized transactions, claims, or other liability.

(C) Released for required institutional risk control, or for resolving customer disputes or inquiries.

(D) Released to persons holding a legal or beneficial interest relating to the consumer.

(E) Released to persons acting in a fiduciary or representative capacity on behalf of the consumer.

1 (4) The confidential consumer information is released to
2 provide information to insurance rate advisory organizations,
3 guaranty funds or agencies, applicable rating agencies of the
4 financial institution, persons assessing the institution's
5 compliance with industry standards, and the institution's
6 attorneys, accountants, and auditors, provided that the
7 information obtained is not used for any other purpose.

8 (5) The confidential consumer information is released to the
9 extent specifically required under other provisions of law and in
10 accordance with the Right to Financial Privacy Act of 1978 (12
11 U.S.C. Sec. 3401 et seq.), to law enforcement agencies, including
12 a federal functional regulator, the Secretary of the Treasury with
13 respect to subchapter II of Chapter 53 of Title 31, and Chapter 2
14 of Title I of Public Law 91-508 (12 U.S.C. Secs. 1951-1959), the
15 California Department of Insurance, or the Federal Trade
16 Commission, and self-regulatory organizations.

17 (6) The confidential consumer information is released (A) to a
18 consumer reporting agency in accordance with the Fair Credit
19 Reporting Act (15 U.S.C. Sec. 1681 et. seq.), or (B) from a
20 consumer report reported by a consumer reporting agency,
21 provided that the information obtained is not used for any other
22 purpose.

23 (7) The confidential consumer information is released in
24 connection with a proposed or actual sale, merger, transfer, or
25 exchange of all or a portion of a business or operating unit if the
26 disclosure of confidential consumer information concerns solely
27 consumers of such business or unit, provided that customers of an
28 acquired, sold, merged, transferred or partially or fully exchanged
29 business or operating unit are notified of their desire to disallow
30 of the sharing of any confidential consumer information and given
31 30 days after the completion of the sale, merger, transfer or
32 exchange of all or a portion of a business or operating unit to
33 communicate their preference to the remaining entity. During this
34 30-day period, customers of the acquired entity shall not have their
35 confidential consumer information disclosed except as provided
36 elsewhere in this subdivision. The notice referenced in this
37 provision shall be substantially the same format as that delineated
38 in Section 4054, and shall explicitly refer by name both the entity
39 with whom the customer initially established the relationship and
40 the name of the remaining business entity.



(8) *The confidential consumer information is released to comply with federal, state, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by federal, state, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.*

(9) When a financial institution is reporting a known or suspected instance of elder or dependent adult financial abuse or is cooperating with a local adult protective services agency investigation of known or suspected elder or dependent adult financial abuse pursuant to Article 3 (commencing with Section 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code.

~~(10) To, or in, any court, arbitration or other proceeding, or to any employee, agent, or representative for purposes of the enforcement of an obligation of the consumer, or the assignment or sale of an obligation of the consumer.~~

~~(11) If the information is necessary to evaluate, detect, or reduce the risk of fraud, identity theft, or possible criminal activities, or to protect the consumer against actual or potential, fraud, unauthorized transactions, claims, or other liability.~~

~~(e) (1) —~~

4056.5. (a) The restrictions on disclosure and use of confidential consumer information, and the requirement for notification, disclosure, and *opportunity for the consumer to either direct that the confidential consumer information not be disclosed or provided* prior written consent ~~of a consumer~~, as provided in this division, do not apply to any person or entity that meets ~~paragraphs paragraph (1) or (2) and (3)~~ except when confidential consumer information is *or will be* shared with an affiliate, subsidiary, or third party ~~without the consumer's consent~~.

~~(2)~~

(1) The person or entity is licensed in one or both of the following categories and is acting within the scope of the respective license:

(A) As an insurance agent, licensed pursuant to Chapter 5 (commencing with Section ~~1622~~ 1621), Chapter 6 (commencing

1 with Section 1760), or Chapter 8 (commencing with Section 1831)
2 of Division 1 of the Insurance Code.

3 (B) Is licensed to sell securities by the *United States* Securities
4 and Exchange Commission.

5 ~~(3)~~

6 (2) The person or entity meets the requirements in paragraph
7 (1) and has a written contractual agreement with ~~a~~ *another* person
8 or entity described in paragraph ~~(2)~~ *(1)* and the contract clearly and
9 explicitly ~~specifies all of~~ *includes, but is not limited to* the
10 following:

11 (A) The rights and obligations of the parties in the insurance or
12 securities transaction.

13 (B) An explicit limitation on the use of confidential consumer
14 information about a consumer ~~as it relates~~ to transactions
15 authorized by the contract and the requirements contained in this
16 division.

17 ~~(C) A statement that the transactions authorized by the contract~~

18 (C) *The transactions specified in subparagraph (B) fall within*
19 *the scope of activities permitted by the licenses of the parties.*

20 *(b) The restrictions on disclosure and use of confidential*
21 *consumer information, and the requirement for notification and*
22 *disclosure provided in this division, shall not limit the ability of*
23 *insurance agents and brokers to respond to written or electronic,*
24 *including telephone, requests from consumers seeking price*
25 *quotes on insurance products and services.*

26 4057. (a) ~~Any negligent, or knowing and willful violation of~~
27 ~~this division that results in an economic loss to a customer is~~
28 ~~punishable as a misdemeanor.~~

29 ~~(b)~~ In addition to any other remedies available at law, any
30 consumer may bring an action against any financial institution that
31 negligently discloses or shares confidential consumer information
32 concerning him or her in violation of this division, for either or
33 both of the following:

34 (1) Nominal damages of ~~one thousand dollars (\$1,000)~~ *one*
35 *hundred dollars (\$100)*. In order to recover under this paragraph,
36 it shall not be necessary that the plaintiff suffered or was threatened
37 with actual damages.

38 (2) The amount of actual damages, if any, sustained by the
39 consumer.

40 ~~(e)~~

(b) (1) In addition, any financial institution that negligently discloses or shares confidential consumer information in violation of this division shall be liable, irrespective of the amount of damages suffered by the consumer as a result of that violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation.

(2) (A) Any financial institution that knowingly and willfully obtains, discloses, or uses confidential consumer information in violation of this division shall be liable for an administrative fine or civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation.

(B) Any financial institution that knowingly and willfully obtains, discloses, or uses confidential consumer information in violation of this division shall be liable upon a first violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation, or upon a second violation for an administrative fine or civil penalty not to exceed ten thousand dollars (\$10,000) per violation, or upon a third or subsequent violation for an administrative fine or civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation.

(3) Any financial institution that knowingly and willfully obtains, discloses, or uses confidential consumer information in violation of this division for financial gain shall be liable upon a first violation for an administrative fine or civil penalty not to exceed five thousand dollars (\$5,000) per violation, or upon a second violation for an administrative fine or civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation, or upon a third or subsequent violation for an administrative fine or civil penalty not to exceed two hundred fifty thousand dollars (\$250,000) per violation and shall be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation.

(4) Nothing in this subdivision shall be construed as authorizing an administrative fine or civil penalty under both paragraphs (2) and (3) for the same violation.

(c) *This section shall become operative on and after July 1, 2003.*

4058. This division shall not be construed in a manner that is inconsistent with the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.).

1 4059. The provisions of this division shall be severable, and
2 if any phrase, clause, sentence, or provision is declared to be
3 invalid or is preempted by federal law or regulation, the validity
4 of the remainder of this division shall not be affected thereby.

5 SEC. 2. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.

